

HUMAN RIGHTS AT THE CROSSROADS...
Focus on the Guarantee of Equality

VOLUME 2

Fall 1999

April Burey

**Faculty of Law
University of Toronto**

BORA LASKIN LAW LIBRARY



3 1761 04866 6291

BORA LASKIN LAW LIBRARY

AUG 23 1999

FACULTY OF LAW
UNIVERSITY OF TORONTO


HUMAN RIGHTS AT THE CROSSROADS...
Focus on the Guarantee of Equality

VOLUME 2

Fall 1999

April Burey

**Faculty of Law
University of Toronto**



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/humanrightsatcro00bure>

TABLE OF CONTENTS

VOLUME 1

I. SITUATING HUMAN RIGHTS - "INTERNATIONALIZATION"

1. "Universal Declaration of Human Rights," *Basic Documents in International Law*, 4th ed. By I. Brownlie, (New York: Oxford University Press, 1995) at 255-261. **1**
2. "International Covenant on Economics, Social and Cultural Rights," *ibid.* at 263-275. **7**
3. "International Covenant on Civil and Political Rights," *ibid.* at 276-306. **14**
4. "American Convention on Human Rights 1969," *Basic Documents on Human Rights*, 3rd. ed., by I Brownlie, (New York: Oxford University Press, 1992) at 495-530. **30**
5. M. Cranston, "Are there any Human Rights?" (1983) 112(4) *Daedalus* at 1-17. **48**
6. J. Donnelly, "Cultural Relativism and Universal Human Rights" 6 *Human R. Quarterly* at 400-419. **58**
7. I. Brownlie, *Principles of Public International Law*, 4th ed., (New York: Oxford University Press, 1990) at 32-57; 564-577. **68**

II. SITUATING HUMAN RIGHTS – "UNIVERSALIZATION"

Constitutional

1. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitutional Act*, 1982 being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 11. **90**

Legislation

2. *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. **98**
3. *Human Rights Code*, R.S.O. 1990, c. H-19. **142**

Other

4. Law Society of Upper Canada, *Rules of Professional Conduct*, "Rule 28 on Discrimination". **174**
5. University of Toronto "Statement on Human Rights". **175**

III. LIMITATIONS ON HUMAN RIGHTS

1. A. Kiss, "Permissible Limitations on Rights" in L. Henkin, ed., *The International Bill of Rights: The Covenant on Civil & Political Rights* (New York: Columbia University Press, 1981) at 290-310. 176

Constitutional

2. *R. v. Oakes* (1986), 26 D.L.R. (4th) at 200-202; 224-230. 187

Legislation

3. *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)* (1990), 72 D.L.R. (4th) at 417-425; 434-436; 438-439. 193
4. *Canada (Canadian Human Rights Commission) v. Toronto Dominion Bank (re Canadian Civil Liberties Association)* (1998), FCA No. 1036 at 1-14. 200
5. *Board of Governors of Seneca College v. Bhadauria* (1981), 124 D.L.R. (3rd) at 193-204. 214

IV THE GUARANTEE OF EQUALITY

A. Equality – Generally

1. P. Westen, "The Empty Idea of Equality" (1982) 95 Harv. L.R. at 537-596. 221

International

2. *South West Africa Cases* (Tanaka J.), *Basic Documents on Human Rights*, 3rd ed. By I. Brownlie (New York: Oxford University Press, 1992) at 568-598. 252
3. *Belgian Linguistic Case*, (1968), Eur. Ct. H.R. Ser. A, No. 6, 1 E.H.R.R. at 252-253; 283-285. 269
4. I. Brownlie, *Principles of Public International Law*, 4th ed., (New York: Oxford University Press, 1990) at 598-601. 272
5. A. Bayefsky, "The Principle of Equality or Non-Discrimination in International Law" (1990) 11 Human R.L.J. at 1-34. 276

Constitutional

6. J. Bakan, *Just Words: Constitutional Rights and Social Wrongs*, (Toronto: University of Toronto Press, 1997) at 45-62. 294
7. *Andrews v. Law Society of British Columbia* (1989), 56 D.L.R. (4th) at 1-31. 307

Legislation

8. *Re Ontario Human Rights Commission and Simpson-Sears Ltd.* (1985), 23 D.L.R. (4th) at 321-339. **323**

B. Equality - Affirmative Action

1. Ontario Law Reform Commission, *Litigating the Relationship Between Equity and Equality* (Study Paper) by C. Sheppard (1993) at 10-18; 49-58. **333**

International

2. *See* A. Bayefsky article, *Supra* at 279.

Constitutional

3. *R. v. Conway*, [1993] 2 S.C.R. at 872-874; 877-878. **346**
4. *Lovelace v. Ontario* (1997) 33 O.R. (3rd) at 735-739; 749-764. **351**
5. *Battlefords and District Co-operative v. Gibbs* (1996) 140 D.L.R. (4th) at 1-5; 8-23. **362**
6. *Ferrell v. Ontario (Attorney General)*, [1997] O.J. (Gen. Div.) No. RE/6078/95. **373**

Legislation

7. *Action Travail des Femmes v. Canada National Railway* (1987), 40 D.L.R. (4th) 193-216. **380**
8. *Haig v. Canada*, (1992), 94 D.L.R. (4th) 1-15. **393**

Other

9. University of Toronto "Employment Equity Policy". **401**

VOLUME 2

V. THE GUARANTEE OF EQUALITY WITH RESPECT TO:

A. RACE

International

1. "International Convention on the Elimination of all Forms of Racial Discrimination 1966," *Basic Documents on Human Rights* 3rd. ed. By I Brownlie, (New York: Oxford University Press, 1990) at 32-57; 564-577. **402**

2.	<i>R. v. R.D.S</i> (1997), No. 25063 at 1-10; 1-15 (See also 3 S.C.R. (1997) 484).	411
3.	<i>R v. Williams</i> (1998) No. 25375 at 1-19.	438
<u>Legislation</u>		
4.	<i>Christie v. York Corp.</i> , [1940] S.C.R. at 139-142.	479
5.	W. Tarnopolsky, <i>Discrimination and the Law: Including Equality Rights Under the Charter</i> , Revised by W. Pentney (Scarborough: Carswell, 1994) at 1-1 to 1-26; 2-1 to 2-14.	482
<u>Critical Race Theory</u>		
6.	K. Crenshaw, "Introduction" in <i>Critical Race Theory: The Writings that Formed the Movement</i> , eds. K Crenshaw, N. Gotanda, G. Peller <i>et al.</i> (New York: The New Press) at xii-xxxii.	524
7.	D. Bell, <i>Faces at the Bottom of the Well</i> , (New York: Basic Books, 1992) at 47-64.	536
B. GENDER		
<u>International</u>		
1.	H. Charlesworth, "What are 'Women's International Human Rights'?" in R. Cook, ed., <i>Human Rights of Women</i> (Philadelphia: University of Pennsylvania Press, 1994) at 58-76.	548
2.	"Convention on the Elimination of All Forms of Discrimination Against Women 1970," <i>Basic Documents on Human Rights</i> , 3rd. ed., by I Brownlie, (New York: Oxford University Press, 1992) at 169-181.	561
3.	<i>The Lovelace Case</i> , Report of the Human Rights Commission, 36 U.N. GAOR Supp. (No. 40) at 166, U.N. Doc. A/36/40 (1981).	569
<u>Constitutional</u>		
4.	<i>Symes v. Canada</i> (1993), 110 D.L.R. (4th) 470-471; 506-515; 551-566.	574
5.	<i>Thibaudeau v. Canada</i> (1995), 124 D.L.R. (4th) 449-455.	589
<u>Legislation</u>		
6.	<i>Brooks v. Canadian Safeway Ltd.</i> (1989), 59 D.L.R. (4th) 321-328; 338-344.	593
7.	<i>Robichaud v. R.</i> (1987) 40, D.L.R. (4th) 577-596.	602

Other

8. University of Toronto “Policy on Sexual Harassment”. 608
9. Law Society of Upper Canada *Rules of Professional Conduct*, “Rule 27 on Sexual Harassment”. 622

C. SEXUAL ORIENTATION

International

1. P. Ashman, “Introduction” and P. Van Dijk, “Treatment of Homosexuals under the European Convention on Human Rights”, in K. Waaldijk & A. Clapham, eds., *Homosexuality: A European Community Issue*, (Dordrecht: Martinus Nijhoff, 1993) at 3-5; 179-206. 624

Constitutional

2. *Egan v. Canada* (1995), 124 D.L.R. (4th) at 609-615; 618-627. 644
3. *Vriend v. Alberta*, 156 (1998) D.L.R. (4th) at 385-393; 411-416; 421-430. 653
4. *Oncale v. Sundowner Offshore Services* 118 S. Ct. 998 (1998) at 998-1003. 668

Legislation

5. See Haig, *Supra* at 380.

D. DISABILITY

International

1. Declaration on the Rights of Disabled Persons; proclaimed by the United Nations General Assembly Dec. 9, 1975; GA RES. 3447 (XXX) (1975). 671

Constitutional

2. *Rodriguez v. British Columbia. (Attorney General)* (1993), 107 D.L.R. (4th) at 342-347; 386-413. 674
3. *Eldridge v. British Colombia (Attorney General)* (1995) 151 D.L.R. at 576-581; 587-590; 593, 611-625. 691

Legislation

4. See *Battlefords, Supra* at 362.

E. INTERSECTIONALITY

1. A. P. Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 Stan. L. Rev. 3 at 581-616. **717**

International

2. A.K. Wing, "Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine, and South Africa: Issues for LatCrit Theory" (1996-1997) 28 U. Miami Inter-Am. L. Rev. 2 at 337-360. **737**

Constitutional

3. *Evan v. Canada* (1985), 125 D.L.R. (4th) at 609; 635-637 (per L'Heureux-Dube, J).
4. *Dartmouth/Halifax County Regional Housing Authority v. Sparks* (1993), 101 D.L.R. (4th) at 224-225; 232-235. **753**

Legislation

5. *Jefferies v. Harris County Community Action Association*, 615 F. 2d at 1025; 1028-1029; 1032-1034 (1980). **756**
6. *Judge v. Marsh*, 649 F. Supp. at 770-771; 779-780 (D.D.C. 1986). **760**
7. *McKinney v. University of Guelph* (1990), D.L.R. (4th) at 545-551; 609; 626-627 (per Wilson, J.). **763**

APPENDICES

Sample Complaint Forms:

International

1. European Court of Human Rights. **769**

Constitutional

2. Supreme Court of Canada, *Factum of R. v. Conway*. **780**

Legislation

3. Canadian Human Rights Commission. **788**
4. Ontario Human Rights Commission. **790**